



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"



February 15, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF A DONATION AGREEMENT
WITH MONTALVO PROPERTIES LLC
FOR DONATION OF TESORO ADOBE PARK AND ACCEPTANCE OF THE
OPERATION AND MAINTENANCE OF THE PROPERTY BY THE COUNTY;
AUTHORIZATION FOR THE DIRECTOR OF PARKS AND RECREATION TO
NEGOTIATE A CONTRACT FOR OPERATION AND MAINTENANCE; APPROVAL
OF AN APPROPRIATION ADJUSTMENT ESTABLISHING THE TESORO ADOBE
SPECIAL FUND; AND OTHER RELATED ACTIONS
(FIFTH DISTRICT) (4 VOTES)**

**JOINT RECOMMENDATION WITH THE CHIEF ADMINISTRATIVE OFFICER THAT
YOUR BOARD:**

1. Find that the approval of the Donation Agreement for Tesoro Adobe Park and related actions are categorically exempt from the California Environmental Quality Act (CEQA);
2. Approve the Donation Agreement for the Tesoro Adobe Park with Montalvo Properties, LLC (the Developer) in substantially the same form as the attached (Attachment A);
3. Approve the Reciprocal Easement and Joint Use Agreement (Reciprocal Agreement) as required by the Donation Agreement in substantially the same form as the attached (Attachment B);
4. Authorize the Chief Administrative Office (CAO) to accept the Tesoro Adobe Park on behalf of the County and execute the Donation Agreement, Grant Deed and Reciprocal Easement and Joint Use Agreement upon approval as to final form by County Counsel;

5. Authorize the Department of Parks and Recreation to operate and maintain the park in accordance with the conditions of acceptance in the Donation Agreement and all other applicable requirements, with the operations and maintenance of the park to be funded through benefit assessments, payments from the Tesoro del Valle Master Homeowner's Association (Master Association); a donation from the Developer, revenue from fees and activities, and the General Fund;
6. Authorize the Director of the Department of Parks and Recreation to negotiate and execute an agreement with the Santa Clarita Historical Society or other qualified nonprofit organization or governmental agency for the operation and maintenance of the Tesoro Adobe Park and to execute an agreement, with a term of five years and options to extend the agreement for three periods of five years each if said negotiations are successful and upon approval as to form by County Counsel;
7. Authorize the Director of the Department of Parks and Recreation to negotiate and execute a personal services contract with the current caretakers of the facility in order to provide for an on-site caretaker for a term not to exceed five years, with options to extend the agreement for up to an additional five years on a year by year basis at the Department's discretion;
8. Approve the attached appropriation adjustment (Attachment C) to establish the Tesoro Adobe Park Special Fund as an interest-bearing fund and provide appropriation, in the amount of \$137,000, in the County's Fiscal Year 2004-05 Budget to be fully funded by payments from the Master Association and Developer and transfers from the Tesoro Adobe Park Landscaping and Lighting Act District Zone No. 76; and
9. Accept a donation of \$10,000 from the Chiquita Canyon Landfill for Tesoro Adobe Park; authorize the Department of Parks and Recreation to deposit the funds into the Tesoro Adobe Park Special Fund to be used exclusively for educational and interpretive purposes at the Tesoro Adobe Park; and instruct the Executive Officer to prepare an appropriate letter of appreciation to the Chiquita Canyon Landfill for its donation.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will transfer ownership of the Tesoro Adobe Park to the County and provide for the operation and maintenance of the park by the County.

Background

The Tesoro Adobe Park is part of a large residential development known as the Tesoro del Valle Project located in the San Francisquito Canyon area of the Santa Clarita Valley.

The 2.66 acre property is a registered State Historical Site and also on the National Register of Historic Places. The site, located on Avenida Rancho Tesoro in the Santa Clarita Valley, contains an adobe ranch house, four other adobe structures and a wood frame barn located at 29350 Avenida Ranch Tesoro. The historical structures are currently being rehabilitated by the Developer, and will be completely rehabilitated prior to acceptance of the park by the County.

Donation Agreement

The Developer will transfer all real property interest in the Tesoro Adobe Park property to the County of Los Angeles, pursuant to the Donation Agreement. Under the Donation Agreement, the Developer is required to provide title insurance in an amount equal to the fair market value of the property, as established by an appraisal, and to pay all escrow fees and other costs associated with the transfer.

Under the terms of the Donation Agreement, the County is not obligated to take ownership of the park until such time as 896 parcels are assessable by the Landscape and Lighting Act District (LLAD) established by your Board in May 2003 to offset a portion of the costs associated with maintenance of the park and at least 500 Property Units are obligated to pay an assessment to the Master Association under the Reciprocal Easement and Joint Use Agreement (Reciprocal Agreement) attached to the Donation Agreement. In addition, the Developer is required to complete the relocation and renovation of the historical structures and construct associated site improvements on the park prior to conveyance of the park to the County.

The Reciprocal Agreement will provide for a reciprocal easement for parking and vehicular and pedestrian ingress and egress on the site. The Reciprocal Agreement also defines the rights of the Master Homeowners Association for use of this site and maintenance and cost sharing for the easement area.

The Developer has begun renovation of the historic site. Based on current information, the number of parcels that are assessable by the LLAD and the number of property units that are obligated to pay assessments to the Master Association exceed the minimum levels required in the donation agreement. It is expected that the County will take possession of the property in March 2005.

Operation and Maintenance

Upon transfer of the property, the County agrees to operate the park as an interpretive center under terms defined in the Historical Site Rules attached to the Donation Agreement and the Preservation Covenant attached to the Grant Deed and in accordance with the use and operations conditions that were approved in the Developer's entitlement dated May 18, 1999, as required by the Department of Regional Planning.

The Historical Site Rules set forth conditions regarding the types of uses permitted, the hours of operation, and occupancy limits for the Main Ranch House, and permits the establishment of rental fees for use of the facility by persons who are not members of the Master Association.

The Historical Site Rules also require the facilities to be open to the public for no less than 12 days per year and provide for the facilities to be available by appointment for the purpose of studying the historical structures. The Historical Site Rules also establish guidelines for the resolution of conflicting requests to use the facilities, while the Preservation Covenant establishes guidelines for any renovation or repair of the historical structures.

Operating Agreement

The Developer's Tesoro del Valle Project (Project 92-074) Conditions of Approval providing for the maintenance and operation of the Tesoro Adobe Park contemplated ownership and maintenance of the site by a party approved by the County. Now that the Landscape and Lighting Act District has been established, the County may accept ownership and may contract for operation and maintenance of the site by the Santa Clarita Historical Society (Society) or any other appropriate entity.

The Society has expressed an interest in operating and maintaining the park under an agreement with the County. Any operation and maintenance agreement with the Society would require the Society to comply with all of the Tesoro Adobe Park conditions contained in the Historical Site Rules, Preservation Covenant and the Conditions of Approval. In addition, the Society would be required to comply with all of the County's standard contract provisions.

If negotiations are successful, the Director of Parks and Recreation would be authorized to execute the agreement for an initial term of no more than five years, with three additional five-year terms at the Department's option. Should negotiations not be successful, the Department may negotiate with another qualified non profit organization or governmental agency or the Department will provide for the operation and maintenance of the facility through Departmental staff.

Any costs associated with the agreement with the Society or with Departmental operation of the Tesoro Adobe Park would be offset in large part by revenues dedicated for the operation and maintenance of the facility and appropriated in the Tesoro Adobe Park Special Fund.

Personal Services Agreement

As one of the conditions for donation of the Department, the donor requires that the Department maintain an onsite caretaker and caretaker living quarters. Under the conditions of the donation, the Department may enter into a personal services agreement with the current caretakers at a rate of compensation equal to the caretakers' current pay (\$2,500 per month plus a \$200 per month car allowance). It is recommended that your Board authorize the Department to enter into a personal services agreement with the current caretakers for a term not to exceed five years, with optional yearly extensions thereafter for a maximum of an additional five years.

The current caretakers have lived on site and cared for the property for more than a decade. Their familiarity with the facility would be a benefit to the Department and, since the facility represents both their home and their livelihood, the Department feels it is appropriate to retain their services for some period of time.

If the Department is unable to negotiate an agreement with the current caretakers and/or at the expiration of any term thereof, the Department may solicit for a personal services contract for the caretaker duties or utilize the services of a County employee for this purpose. In accordance with standard County practice, the caretakers' monthly rate may be increased annually by an amount not to exceed any cost of living increase granted to County employees.

Tesoro Adobe Park Special Fund

Under the terms and conditions of the Landscape and Lighting Act District, the Donation Agreement and the Reciprocal Agreement, funds provided by the LLAD, Master Association and the Developer, and any revenues generated from the payment of fees or rental of the facilities, are required to be used exclusively for the maintenance and operation of the Tesoro Adobe Park. Further, the Reciprocal Agreement requires the County to provide the Master Association with an annual report outlining the revenue received and the expenses paid for the operation and maintenance of the park. Therefore, it is recommended that a special fund be established within the County budget in order to allow the Department to accurately track and report the revenue and expenses paid from those revenues.

Acceptance of Donation

In mid-December, the Department was contacted by the Chiquita Canyon Landfill regarding the donation of \$10,000 to be used for educational and interpretive purposes at the Tesoro Adobe Park. As the donation was contingent upon the Department accepting the donation prior to December 31, 2004, and no meetings of your Board were scheduled prior to that date, the Department conditionally accepted the donation on the Board's behalf and deposited the funds into a miscellaneous trust account pending formal acceptance of the donation by your Board.

Current Board policy requires that your Board accept all donations valued at \$10,000 or more. The recommended action to accept the donation will fulfill the requirements of County policy.

Implementation of Strategic Plan Goals

Approval of the Donation Agreement and these recommendations will further the Board-approved County Strategic Plan Goals No. 3, Organizational Effectiveness, No. 5, Children and Families Well-Being, and No. 6, Community Services by providing for the operation of a historic park for public recreational and educational purposes.

FISCAL IMPACT/FINANCING

Costs associated with the operation and maintenance of the Tesoro Adobe Park will be offset, in large part, by revenues dedicated for those purposes, as follows:

- Benefit assessments collected by the LLAD;
- Payments from the Master Association in an amount equal to \$10 per month for each assessable Property Unit as required in the Reciprocal Agreement;
- A one-time contribution of \$85,000 from the Developer to offset a portion of the initial costs of operation and maintenance; and
- Revenues generated at the facility from rentals, admissions and other special events and activities.

The attached appropriation adjustment will establish the Tesoro Adobe Park Special Fund for the purpose of collecting revenues from the Master Association, donations from the developer and others, rental and admission fees, and other revenues and to provide appropriation offset by these revenues to pay for direct operating and maintenance expenses. In addition to these revenues, the Tesoro Adobe Park Special

Fund will receive transfers from the LLAD to fund those costs that are identified to be paid from LLAD and are in accordance with the Street and Highways Code.

The total operating requirements include an annual reserve that the County will accumulate and maintain for the LLAD as well as County costs for administering the LLAD, including costs associated with the annual renewal of the benefit assessment, in addition to the costs of operating the park.

The revenues generated are anticipated to be sufficient to fund these costs as well as offset maintenance costs and meet the minimum operating obligations. However, given the historical importance of the facility, the Department believes that access for the public, including school groups, families and children, should be available at least five days a week (Wednesday through Sunday) and for special events. This level of operation is estimated to require approximately \$87,000 of General Fund support on an annual basis.

Attachment D provides a projection of the operating requirements and financing sources available or required for the Tesoro Adobe Park Fiscal Year 2004-05 through Fiscal Year 2010-11, based upon the Department operating and programming the facility. The Department will include the estimated operating requirements in its New Facilities Budget Request for Fiscal Year 2005-06 to the CAO. The CAO will review the operating requirements and financial sources and incorporate its recommendations in the Proposed Budget.

If an agreement is reached with the Society or non profit organization for the operation of the Tesoro Adobe Park, minimal General Fund support would be necessary since the Society is a volunteer organization and may be able to operate the facility with revenues dedicated for Tesoro Adobe Park.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Once the property is accepted by the County, the County is authorized to contract with the Society, another qualified non profit organization or governmental agency for the operation and maintenance of the property. The Society's purpose is the collection, preservation, and public viewing of buildings, books, documents, photos, prints, records, artifacts, etc., that have historical significance in the Santa Clarita Valley and surrounding areas.

The Society currently operates a portion of the Frew property at William S. Hart Regional Park, including a train depot and railroad equipment known as Heritage Junction. The Society operates the property under a Department-issued permit following the expiration of a County operating agreement for that property. A separate

agreement for the continued operation of the Hart Park historical facility by the Society may be presented to the Board at a future date.

County Counsel will approve all documents in their final form prior to execution by the Chief Administrative Office.

ENVIRONMENTAL DOCUMENTATION

A Phase II study was completed for the property in April 2001 and concluded that the property is acceptable for public use. The Final Environmental Report for the subdivision referenced the preservation and restoration of the historical structures on the Tesoro Adobe Park property. The acceptance of the Tesoro property and the approval of the related actions are categorically exempt under the California Environmental Quality Act (CEQA) according to State CEQA Guidelines Section 15316 (b) which applies to acquisition of land for a park with historical resources when there is a management plan to preserve the historic resources.

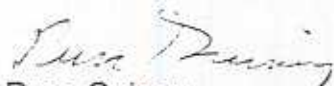
IMPACT ON CURRENT SERVICES AND PROJECTS


The acquisition and operation of the historic site will have a positive impact for the public interested in cultural and historical resources in the County. The provided services will assist the County in providing quality recreational for public use.

CONCLUSION

It is requested that two conformed copies of this action be returned to the Department and a conformed copy be returned to the Chief Administrative Office, Real Estate Division.

Respectfully submitted,


Russ Guiney
Director


David Janssen
Chief Administrative Officer

Attachments

c: Executive Officer
James E. Hartl, Regional Planning

DONATION AGREEMENT

THIS DONATION AGREEMENT ("**Agreement**"), dated for reference purposes only as of _____, 2005, is entered into by and between Montalvo Properties LLC, a California limited liability company ("**Donor**"), and the County of Los Angeles, a body corporate and politic ("**County**").

RECITALS

- A. Donor is the owner of that certain real property located in the unincorporated area of the County of Los Angeles, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "**Historical Site**" or "**Donated Parcel**"), upon which is located an adobe ranch house, four other adobe structures and one wood-frame structure (collectively, the "**Historical Structures**").
- B. Donor and other merchant builders (collectively, "**Developers**") are the owners and developers of portions of that certain real property adjacent to the Historical Site and located in the unincorporated area of the County of Los Angeles (the "**Property**") which Property is being developed as a residential community to be known as Tesoro del Valle (the "**Project**").
- C. In order to establish a plan for the development, maintenance, enjoyment and use of the Project, Developers have caused or will cause that certain Master Declaration of Establishment of Conditions, Covenants and Restrictions for Tesoro del Valle (the "**Declaration**") to be recorded against the initial phase of the Project to be developed and it is intended that all portions of the Property will be subsequently annexed thereto (without, however, any obligation to annex same, as more particularly described in the Declaration). The Declaration provides for the formation of the Tesoro del Valle Master Homeowners Association ("**Master Association**") which shall be responsible for the management and maintenance of the Project and various portions of the common area within the Project, as described in the Declaration.
- D. Donor desires to convey to County and County desires to accept, all of Donor's rights, title and interest in and to the Donated Parcel, except for all right, title and interest in and to the water and water rights related to the Donated Parcel, and subject to the reciprocal parking easement, in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

The terms and conditions of this Agreement are as follows:

1. Condition of Title to Transfer Property. A preliminary title report with respect to the Property, issued by Chicago Title Company (the "**Title Report**") is attached hereto as Exhibit B and incorporated herein by this reference. Donor shall cause to be issued a CLTA Standard

Coverage Form Policy of Title Insurance ("**Title Policy**") issued by Fidelity National Title Company ("**Title Company**") in an amount equal to the fair market value of the Donated Parcel, as determined by an appraisal report provided by Donor, containing only (a) those exceptions and encumbrances shown on the Title Report, (b) the REA (as defined below) and (c) any other items agreed to in writing by the County and Donor.

2. Form of Grant Deed. Fee simple absolute title to the Donated Parcel, except for all right, title and interest in and to the water and water rights related to the Donated Parcel, shall be conveyed by Donor to County, as described in and by grant deed in the form attached hereto as Exhibit C ("**Grant Deed**"), duly executed and acknowledged by Donor, subject to matters of record approved in writing by the County. Donor and County hereby agree that the Grant Deed shall include, and the Donated Parcel shall be subject to, that certain preservation covenant ("**Preservation Covenant**") which shall be attached to the Grant Deed, as an exhibit thereto.
3. Completion of Construction. Donor shall obtain a Notice of Completion evidencing the completion of the relocation, rehabilitation and construction of the Historical Structures and associated site improvements within the Donated Parcel ("**Notice of Completion**") in accordance with the terms and provisions of the preliminary construction plan and specifications ("**Construction Plan**"), attached hereto as Exhibit E and incorporated herein by this reference, prior to the conveyance of the Donated Parcel. The Construction Plan shall be approved in concept at the time plan check corrections are made and the Construction Plan is deemed permit ready. Thereafter, and prior to conveyance of the Donated Parcel, the Construction Plan will be revised to reflect the "as-built" improvements and such revised Construction Plan shall be deposited into Escrow (as defined below), along with the Notice of Completion issued by the Los Angeles County Department of Building and Safety.
4. Encumbrances. Except for customary maintenance easements granted to municipalities and utilities, Donor agrees not to further encumber the Donated Parcel or to cause, or acquiesce to, any further liens or encumbrances or otherwise alter the condition of title as shown in the Title Policy, without providing prior written notification to County. If Donor further encumbers the Donated Parcel, County, in its sole discretion, may decline to accept transfer of title to the Donated Parcel.
5. Escrow.
 - 5.1 Within ten (10) days after the execution of this Agreement by all parties, the parties shall open an escrow ("**Escrow**") with Fidelity National Title Company, 1300 Dove Street, Suite 300, Newport Beach, CA 92660 Attention: Rada Shepard-Garcia, ("**Escrow Holder**") for the purpose of consummating this Agreement. The parties shall execute and deliver to Escrow Holder, within five (5) business days of receipt, such escrow instructions prepared by Escrow Holder as may be required to consummate the transaction contemplated by this Agreement. Any such instructions shall not conflict with, amend, or supersede any provisions of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control unless the parties expressly agree, in writing, otherwise.

5.2 Escrow Holder is authorized to:

- 5.2.1 Pay, and charge Donor, for any delinquent taxes, and penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the Donated Parcel, except those which title is to be taken subject to and in accordance with the terms of this Agreement;
- 5.2.2 Pay, and charge Donor, for all of the escrow fees;
- 5.2.3 Prorate all real property taxes, if any, which are a lien and/or unpaid as of the close of Escrow according to the formula adopted by the Los Angeles County Assessor's Office and charge Donor. The tax amount charged will be made payable to the County Auditor-Controller's Office following the closing of Escrow. Any taxes which have been prepaid by Donor shall not be prorated, but Donor shall have the sole right, after the closing of Escrow, to apply to the Los Angeles County Treasurer for refund of the taxes attributable to the period after acquisition pursuant to the Revenue and Taxation Code Section 5096.7;
- 5.2.4 When all of the conditions of Escrow have been fulfilled by County and Donor, Escrow Holder is instructed to: (i) first record the Grant Deed and then record the REA (as defined below); (ii) deliver to County and Donor copies of the Escrow closing statements; and (iii) deliver to Donor and County any items or documents given to Escrow Holder to hold for County and/or Donor.

6. Closing. For the purposes of this Agreement, the "Closing" shall be defined as the recordation of the Grant Deed in the Official Records of the County of Los Angeles and the issuance of the Title Policy. The date upon which the Closing occurs is the "Closing Date". The parties agree to use their best efforts to effect the Closing within ten (10) business days of Donor's deposit into Escrow of the revised Construction Plan and Notice of Completion in accordance with Section 3 of this Agreement.

7. Covenant and Obligations of County and Donor.

7.1 County and Donor agree to cooperate with one another in satisfying the following terms, conditions, obligations and covenants contained in the Agreement, including but not limited to, the following:

- 7.1.1 Donor and County hereby agree to use their best efforts to deposit into Escrow, prior to the Closing, that certain Reciprocal Easement and Joint Use Agreement (the "REA"), duly executed and acknowledged by all parties thereto, a copy of which is attached hereto **Exhibit D** and incorporated herein by this reference. County and Donor agree that the

REA contains reciprocal easements and various covenants, obligations, rights and restrictions regarding the Donated Parcel, including but not limited to, the "Historical Site Rules" (as defined in the REA) which pertain to the maintenance and operation of the Donated Parcel and shall survive the Closing. The deposit into Escrow of the duly executed and acknowledged REA shall be a condition of the Closing;

7.1.2 County agrees that it will accept title to the Donated Parcel subject to the Preservation Covenant, attached to the Grant Deed as an exhibit thereto;

7.1.3 Donor agrees that the County will not be obligated or required to accept transfer of title to the Donated Parcel unless and until the later of the following shall occur: (a) December 31, 2004; (b) a landscape and lighting act district ("LLAD") is established for the maintenance and operation of the Donated Parcel and the Historical Structures thereon and at least eight hundred ninety-six (896) APN Parcels are assessable by the LLAD; and (c) at least five hundred (500) Project Units (as defined in the Master Declaration) are obligated to pay assessments to the Master Association in accordance with the terms of the Master Declaration; provided, however, that the County acknowledges and agrees that such assessments to the Master Association will not include the Master Association Dues Subsidy (as defined in the REA) until the Dues Commencement Date (as defined in the REA); and

7.1.4 Endowment. Donor shall make a charitable contribution to the County in the amount of Eighty-five Thousand Dollars (\$85,000) payable at the Closing.

7.1.5 Onsite Caretakers. County agrees to execute a personal services contract with the current caretakers of the facility for a term not to exceed five (5) years, with options to extend for up to an additional five (5) years on a year by year basis at the County's discretion. The obligations under this Paragraph 7.1.5 shall survive the Closing.

8. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested or by Express Mail or Federal Express to the following address:

To County: Los Angeles County Department of Parks and Recreation
455 South Vermont Avenue
Los Angeles, CA 90020
Attention: Russ Guiney, Director

With a copy to: Office of County Counsel
Kenneth Hahn Hall of Administration, Room 648
500 West Temple Street
Los Angeles, California 90012
Attention: Thomas J. Faughnan, Senior Deputy, County Counsel

To Donor: Montalvo Properties LLC
3600 Birch Street, Suite 100
Newport Beach, California 92660
Fax: (949) 863-9010
Attention: Tim Collins & John Evans

With a copy to: Leven & Seligman
1801 Century Park East, Suite 2200
Los Angeles, California 90067
Fax: (310) 843-9353
Attention: Gary E. Leven, Esq.

Notice shall be deemed given two (2) business days after deposit with a carrier as specified above. Notice of change of address shall be given by written notice in the manner detailed in this Section.

9. Donor's Representations and Warranties. Donor makes the following representations and warranties regarding the Donated Parcel and its ownership thereof. Each of the following representations and warranties shall be deemed to have been remade as of the Closing:
- 9.1 Power. Donor has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.
- 9.2 Requisite Action. All requisite action has been taken by Donor in connection with entering into this Agreement and the instruments referenced herein, and, by the Closing, all such necessary action will have been taken to authorize the consummation of this transaction. By the Closing, no additional consent of any person or entity, judicial or administrative body, governmental authority or other party shall be required for Donor to consummate this transaction.
- 9.3 Individual Authority. The individuals executing this Agreement and the instruments reference herein on behalf of Donor have the legal power, right and actual authority to bind Donor to the terms and conditions hereof and thereof.
- 9.4 Validity. This Agreement and all documents required hereby to be executed by Donor are and shall be valid, legally binding obligations of and enforceable against Donor in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

10. County's Representations and Warranties. In consideration of Donor entering into this Agreement and as an inducement to Donor to donate the Donated Parcel, County makes the following representations and warranties, each of which is material and is being relied upon by Donor and the truth and accuracy of which shall constitute a condition precedent to Donor's obligations hereunder. Each of the following representations and warranties shall be deemed to have been remade as of the Closing:
- 10.1 Power. County has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.
- 10.2 Requisite Action. All requisite action has been taken by County in connection with entering into this Agreement and the instruments referenced herein, and, by the Closing, all such necessary action will have been taken to authorize the consummation of this transaction. By the Closing, no additional consent of any person or entity, judicial or administrative body, governmental authority or other party shall be required for County to consummate this transaction.
- 10.3 Individual Authority. The individuals executing this Agreement and the instruments reference herein on behalf of County have the legal power, right and actual authority to bind County to the terms and conditions hereof and thereof.
- 10.4 Validity. This Agreement and all documents required hereby to be executed by County are and shall be valid, legally binding obligations of and enforceable against County in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the right of contracting parties generally.
- 10.5 Historical Structures. The County, or its assignee, will operate the Historical Structures as an Interpretative Center, in a manner which satisfies the use and Operations Conditions contained in the Donor's Entitlement [Map] dated 5/18/99 as required by Los Angeles County Regional Planning Department.
11. Inspection of the Site. Donor agrees to provide County and/or County's employees, representatives and agents with access to the Donated Parcel, and upon reasonable notice, to conduct any inspections County deems appropriate at any time prior to the Closing. County agrees to indemnify and hold Donor harmless from and against any and all loss, threat of loss, suits, claims, actions, liabilities, damages, obligations, demands, costs and expenses (including attorneys' fees) arising out of or in connection with County's and/or County's employees entry onto or inspections made at the Donated Parcel.
12. Condition of Donated Parcel. County acknowledges that neither Donor, its agents, employees nor its other representatives have made any representations or warranties to County regarding any matter relating to the Donated Parcel, except as set forth in this Agreement, including but not limited to, the Donated Parcel's condition, fitness, environmental conditions, adequacy of

design, suitability for a particular purpose, the effect of zoning and other applicable laws, regulations and governmental rulings, or the accuracy, completeness or relevance of any materials or information regarding the Donated Parcel provided by Donor. County agrees that County is relying exclusively on County's own independent investigation of all such matters.

13. Survival of Covenants. The covenants, indemnities, agreements, representations and warranties made herein are intended to survive the Closing and recordation and delivery of the Grant Deed conveying the Donated Parcel to County.
14. Required Actions of County and Donor. County and Donor agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof in order to consummate this transaction and shall use their best efforts to effect the Closing in accordance with the provisions hereof.
15. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and no addition or modification of any term or provision shall be effective unless set forth in writing, signed by both Donor and County.
16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Agreement.
17. California Law. This Agreement shall be construed in accordance with the laws of the State of California.
18. Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.
19. Captions. The captions and the section and subsection numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement nor in any way affect this Agreement.
20. Interpretation. Unless the context of this Agreement clearly requires otherwise, (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.
21. Severability. Should any term, part, portion or provision of this Agreement or any application hereof to any person or circumstance be held to be illegal, invalid or in conflict with any applicable law, rule or regulation, then the validity of the remaining terms, parts, portions and provisions hereof and the application hereof to other persons or circumstances shall be deemed severable, and the same shall remain enforceable and valid to the fullest extent permitted by law.
22. Binding Effect. The provisions of this Agreement shall be binding upon the parties hereto and their respective successors-in-interest.

23. No Presumption Re: Drafter. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
24. Assistance of Counsel. Each party hereto either had the assistance of counsel or had counsel available to it, in the negotiation for, and the execution of, this Agreement, and all related documents.
25. Nonreversionary Interest. After conveyance of the Historical Site by Donor to County, under no circumstances shall fee title revert to Donor and Donor shall have no further right, title or interest in and to the Historical Site.
26. Acknowledgement. The County acknowledges that Donor intends to claim against its Federal and State income taxes, a charitable deduction or credit for (a) the fair market value of the Donated Parcel, (b) the Historical Structures and all improvements thereto, (c) all other improvements within the Donated Parcel, and (d) all other monetary contributions related to the operation, maintenance and endowment of the Historical Structures and the Donated Parcel. The County further acknowledges that the donation by Donor is not a condition of any entitlement but rather a discretionary and voluntary transaction made for the community and public benefit of the County residents. In this regard, the County will cooperate with Donor and, as required by the tax authorities, provide any declaration of the donation transaction in acknowledgement of the above intent and Donor's discretionary action.

/ / / / SIGNATURE PAGE FOLLOWS / / / /

IN WITNESS WHEREOF, Donor has executed this Agreement or caused it to be duly executed and County by order of its Board of Supervisors, has caused this Agreement to be executed on its behalf by the Chair of said Board and attested by the Clerk, the day, month, and year first above written.

DONOR:

DATED: _____

MONTALVO PROPERTIES LLC,
a California limited liability company

By: _____
Name: Joseph D. Clougherty
Title: Managing Member

By: _____
Name: Bernard J. Clougherty
Title: Managing Member

COUNTY OF LOS ANGELES:

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

DATED: _____

County Counsel

By: _____
Deputy

LIST OF EXHIBITS

- A. Legal Description - "Historical Site" or "Donated Parcel"
- B. Title Report
- C. Grant Deed (including Preservation Covenant attached thereto)
- D. Reciprocal Easement and Joint Use Agreement ("REA") (including Historical Site Rules attached thereto)
- E. Construction Plan and Specifications

Exhibit A
Description of the Property

Lot 5 of Tract 51644-05 in the County of Los Angeles, State of California, as per map recorded in Book 1273, Pages 7 through 16, inclusive, of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, excepting therefrom all oil, gas, coal, minerals, mineral rights, asphaltum and hydrocarbon substances as previously reserved in various deeds of record; and excepting therefrom all right, title and interest in and to the water, water rights and other rights which have been reserved to Montalvo Properties and their successors and assigns in accordance with that certain Grant Deed recorded September 15, 2000, as Instrument No. 00-1451710, in the office of the county recorder of Los Angeles County, California.

SUBJECT TO:

1. General and special real property taxes for the current fiscal year and assessments and supplemental assessments, if any;
2. All other covenants, conditions, restrictions, reservations, rights, rights of way and easements of record, if any.

EXHIBIT "B"
Title Report (to be attached)

RECORDING REQUESTED BY:

Fidelity National Title Company
Order No. _____

WHEN RECORDED RETURN TO:

Los Angeles County Department of Parks and Recreation
455 South Vermont Avenue
Los Angeles, CA 90020
Attention: Tim Gallagher, Director

Re APN _____

MAIL TAX STATEMENTS TO THE ABOVE ADDRESS

GRANT DEED

The undersigned Grantor declares:

- (1) The documentary transfer tax is \$_____, which is computed on the full value of the property conveyed;
- (2) The property is located in the unincorporated territory of the County of Los Angeles, State of California.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Montalvo Properties LLC**, a California limited liability company ("**Grantor**"), hereby grants to the **County of Los Angeles**, a body corporate and politic ("**Grantee**"), that certain real property situated in the unincorporated territory of the County of Los Angeles, State of California, more particularly described on **Exhibit "A"** attached hereto and made a part hereof (the "**Property**").

IN WITNESS WHEREOF, this deed has been made and executed by Grantor and Grantee as of _____, for reference purposes only.

"Grantor"

Montalvo Properties LLC,
a California limited liability company

By: _____
Bernard J. Clougherty, Managing Member

By: _____
Joseph D. Clougherty, Managing Member

THIS DEED IS MADE AND ACCEPTED UPON THE COVENANTS AND OTHER MATTERS SET FORTH IN THE PRESERVATION COVENANT ATTACHED HERETO AS EXHIBIT "B" AND INCORPORATED HEREIN BY THIS REFERENCE AND GRANTEE, BY ACCEPTANCE OF THIS DEED, DOES HEREBY APPROVE AND AGREE TO BE BOUND BY THE PROVISIONS OF SAID PRESERVATION COVENANT, FOR AND ON BEHALF OF GRANTEE AND GRANTEE'S HEIRS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS.

"Grantee" County of Los Angeles

DATED: _____

ATTEST:

Executive Officer-Clerk of
The Board of Supervisors

By: _____
Deputy

By: _____
Chair, Board of Supervisors

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

Exhibit B
Preservation Covenant

The undersigned Grantee hereby covenants on behalf of itself, its successors and assigns, to preserve and maintain those certain historical structures, located on the Property described on the Grant Deed to which this Preservation Covenant is attached (the "Historical Site"), consisting of an adobe ranch house, three other adobe structures and one wood-frame structure (the "Historical Structures"), each identified in a Structural Evaluation Report for Tesoro del Valle Project, Clougherty Ranch, dated April 4, 1996, prepared by Melvyn Green and Associates, Inc., as such Historical Structures have been relocated and rehabilitated by Grantor, in order to preserve and enhance those qualities that make the Historical Structures eligible for inclusion in the National Register of Historical Places and to provide public access to the Historical Site. This covenant and the covenants listed below shall be binding servitudes upon the Historical Site and shall be deemed to run with the land.

- (1) Except for ordinary maintenance and repair, no construction, alteration, remodeling, demolition or other action ("alterations") shall be undertaken unless such alterations are consistent with the Secretary of the Interior's Standards for Rehabilitation.
- (2) Grantee will take prompt action as and when required to secure the Historical Structures from the elements, vandalism, or arson and will make any emergency stabilization. Grantee will make every effort to retain or reuse, to the extent practicable, the Historic Structures.
- (3) Grantee shall provide the California State Historic Preservation Officer ("SHPO"), a written summary of actions taken to implement the provisions of this Preservation Covenant within one (1) year after the effective date of transfer of the Historical Structures.
- (4) Grantee may modify for good cause any or all of the foregoing restrictions.
- (5) Grantee shall make the Historical Site open to the public on a regular and continuous basis in response to public demand for said access, but in no event less than twelve (12) days per year, and at such other times by appointment to permit persons affiliated with educational organizations, professional architectural associations and historical societies to study the Historical Structures. Any such public admission may be subject to restrictions as reasonably designed for the protection and maintenance of the Historical Structures. Such admission may also be subject to a reasonable fee.
- (6) In the event of damage resulting from casualty, as defined in Section 165(c)(3) of the Internal Revenue Code, which is of such magnitude and extent as to render repairs or reconstruction of the Historical Structures using all applicable insurance proceeds impractical or infeasible, then
 - (i) Grantee may elect to repair or reconstruct the Historical Structures using insurance proceeds, donations or other funds received by Grantee on account of such casualty, but otherwise at its own expense; or
 - (ii) Grantee may elect to salvage any portion of the Historical Structures and remove them from the Historical Site. In the event that all of the Historical Structures shall be removed from the Historical Site, the Historical Site shall be subject to the supervisory powers over charitable trusts held by the State of California Attorney General under California law. It shall be the responsibility of the Attorney General to appoint a viable entity capable of fulfilling the terms and conditions of this Preservation Covenant.

This covenant is binding on Grantee, its successors and assigns, in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by Grantee, its successors and assigns, verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any lesser estate in the Historical Site, or any part thereof. To the fullest extent permitted by law and equity, Grantor and its successors in office shall have the right to enforce the foregoing covenants. Grantor and its successors in office shall be entitled to institute legal action to enforce performance and observance of these covenants, enjoin acts which violate these covenants, and exercise any other legal or equitable right or remedy with respect to covenants. These rights and remedies may be exercised separately or in connection.

EXHIBIT "D"
Reciprocal Easement and Joint Use Agreement
(to be attached)

EXHIBIT "E"
Construction Plan and Specifications
(to be attached)

RECORDING REQUESTED BY:**WHEN RECORDED RETURN TO:**

Leven & Seligman
 1801 Century Park East, Suite 2200
 Los Angeles, CA 90067
 Attn: Gary E. Leven, Esq.

.....
 Documentary Transfer Tax \$-0-
 (Value and consideration is less than \$100.00)

RECIPROCAL EASEMENT AND JOINT USE AGREEMENT

THIS RECIPROCAL EASEMENT AND JOINT USE AGREEMENT dated _____, 2003 (this "**Agreement**"), is made by and among **Montalvo Properties LLC, a California limited liability company ("Montalvo Properties"), SunCal/Tesoro, LLC, a Delaware limited liability company ("SunCal/Tesoro"), Tesoro del Valle Master Homeowners Association, a California nonprofit mutual benefit corporation ("Master Association"), and the County of Los Angeles, a body corporate and politic ("County")**, (Montalvo Properties, SunCal/Tesoro, County and the Master Association to be individually referred to herein as, "**Party**" and collectively referred to herein as, "**Parties**"), with respect to the following:

A. Montalvo Properties, SunCal/Tesoro and other merchant builders (collectively, "**Developers**") are the owners of portions of that certain real property ("**Property**") located in the unincorporated area of the County of Los Angeles ("**County**"). Developers intend to develop a residential community on the Property to be known as Tesoro del Valle (the "**Project**").

B. In order to establish a plan for the development, maintenance, enjoyment and use of the Project, Developers have caused or will cause that certain Master Declaration of Establishment of Conditions, Covenants and Restrictions for Tesoro del Valle (the "**Declaration**") to be recorded against the initial phase of the Property to be developed and it is intended that all portions of the Property will be annexed thereto in the ordinary course of development of the Property. The Declaration provides for the formation of the Tesoro del Valle Master Homeowners Association ("**Master Association**") which shall be responsible for the management and maintenance of the Project and various portions of the common area ("**Master Common Area**"), including but not limited to, Lot 714 of Tract 51644 (referred to herein as, the "**Master Common Area Lot**"), all as described in the Declaration. As of the recording of this Agreement, the Master Common Area Lot is either (a) owned by SunCal/Tesoro and it is intended that the Master Common Area Lot will be conveyed to the Master Association, or (b) owned by the Master Association and SunCal/Tesoro has retained the right to grant the nonexclusive easement over the Master Common Area Lot, as described hereinbelow.

C. County is the owner of that certain real property located in the unincorporated area of the County of Los Angeles, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "**Historical Site**"), upon which is located an adobe ranch house, four other adobe structures and one wood-frame structure (collectively, the "**Historical Structures**"). County is obligated to operate, maintain and preserve the Historical Structures and the Historical Site as described in the Preservation Covenant ("**Preservation Covenant**") which was recorded against the Historical Site concurrently with the grant deed conveying title to County. By separate documentation, the maintenance and operation of the Historical Site and the Historical Structures will be made a part of a landscape and lighting act district ("**LLAD**") which has or will be formed for this purpose and all owners of Project Units (as defined in the Declaration) shall be assessed by the LLAD for such maintenance and operation costs in accordance with the terms and obligations of such separate documentation. In addition, the Master Association shall pay to the County that portion of the costs associated with the maintenance and operation of the Historical Site and the Historical Structures which are not covered by the LLAD, in the manner described hereinbelow.

D. Montalvo Properties, SunCal/Tesoro, the Master Association and County desire to (a) grant reciprocal nonexclusive easements over and across portions of the Historical Site and that portion of the Master Common Area Lot (the "**Master Common Area Easement Area**"), more particularly depicted on Exhibit B, attached hereto and incorporated herein by this reference, (b) provide for the joint use by the Parties hereto of the Historical Site and the Master Common Area Easement Area, all in accordance with the terms and provisions of this Agreement, and (c) provide for payment to the County by the Master Association for that portion of the costs associated with the maintenance and operation of the Historical Site and the Historical Structures which are not covered by the LLAD, in the manner described hereinbelow.

NOW, THEREFORE, the Parties hereto declare that the Historical Site and the Master Common Area Lot are hereby made subject to the easements, covenants, uses, restrictions, conditions, rights, burdens, benefits and other agreements hereinafter described with the intention that the same shall run with the land and shall be binding upon the Parties and shall inure to the benefit of subsequent owners thereof, upon and subject to the provisions hereof as follows:

1. Reciprocal Easements for Parking and Vehicular and Pedestrian Ingress and Egress.

1.1 Grant of Easements. SunCal/Tesoro hereby creates, establishes and grants a nonexclusive easement (the "**Master Common Area Easement**") over and across the Master Common Area Easement Area to and for the benefit of and as an appurtenance to the Historical Site for parking purposes and vehicular and pedestrian ingress and egress. County hereby creates, establishes and grants a nonexclusive easement (the "**Historical Site Easement**") over and across that portion of the Historical Site depicted on the attached Exhibit C (the "**Historical Site Easement Area**") to and for the benefit of and as an appurtenance to the Master Common Area Lot for parking purposes and vehicular and pedestrian ingress and egress. The Master Common Area Easement Area and the Historical Site Easement Area are collectively referred to herein as, the "**Easement Areas**". The easements granted herein shall continue for as long as the Historical Site is used in accordance with the terms and provisions of the Preservation Covenant.

1.2 Maintenance of Master Common Area Easement Area. The Master

Association shall at all times, at its sole expense, maintain the Master Common Area Easement Area in a neat, clean, safe and attractive condition.

1.3 No Interference. Neither Master Association nor County shall permit any uses within the Easement Areas which materially interfere with the quiet enjoyment of, and access to and from, the Historical Site and/or the Master Common Area Lot.

2. Joint Use.

2.1 Joint Use; Historical Site Rules. The Master Association, members thereof, and County shall all be entitled to joint use of the Historical Site and the Historical Structures located thereon, all in accordance with the terms and provisions of (a) this Agreement, (b) the rules and regulations for the joint use of the Historical Site ("**Historical Site Rules**"), attached hereto as **Exhibit D** and incorporated herein by this reference, and (c) the Preservation Covenant (including the requirement that County make the Historical Site open to the public on a regular and continuous basis in response to public demand for said access, but in no event less than twelve (12) days per year, and at such other times by appointment to permit persons affiliated with educational organizations, professional architectural associations and historical societies to study the Historical Structures. Any such public admission may be subject to restrictions as reasonably designed for the protection and maintenance of the Historical Structures. Such admission may also be subject to a reasonable fee. The Historical Site Rules may only be amended by the unanimous written consent of all members of the Coordinating Committee, as defined below.

2.2 Coordinating Committee. County and the Master Association shall form a committee ("**Coordinating Committee**") which will coordinate and discuss any issues which require the coordination or cooperation of the Parties hereto, including but not limited to, the scheduling of events and use of the Historical Site. Such Coordinating Committee will be comprised of one member of each of County and the Master Association and shall be formed and governed in accordance with the rules and criteria established by its members. Notwithstanding the above, the Coordinating Committee shall have no power to burden the Master Common Area Lot or the homeowners within the Tesoro del Valle Project in any manner nor to bind any Party to any obligations, other than in accordance with the terms and provisions of this Agreement.

2.3 Maintenance and Costs of the Historical Site. County shall at all times maintain the Historical Site and all improvements thereon in a neat, clean, safe and attractive condition.

3. Payment to County; Budgets and Annual Reports.

3.1 The Master Association shall pay to the County that portion of the costs associated with the maintenance and operation of the Historical Site and the Historical Structures which are not covered by the LLAD, in the manner described hereinbelow. Commencing the later of both (a) ninety (90) days after the last date of the month in which the first escrow closing within the Project occurs, and (b) that date that the interpretive center located within the Historical Site is in use and operational and is incurring operating expenses ("**Dues Commencement Date**"), the Master Association shall pay to County an initial amount equal to Ten Dollars (\$10.00) per month per

Project Unit (as defined in the Declaration) which is subject to and liable for assessments in accordance with the Declaration, which amount may be changed from time to time in accordance with Section 3.2 below, but in no event shall exceed a maximum of Ten Dollars (\$10) per month per Project Unit which is subject to and liable for assessments in accordance with the Declaration ("**Master Association Dues Subsidy**"). The initial monthly Master Association Dues Subsidy per Project Unit shall be based on the Proposed Fiscal Year 2003/2004 Budget Estimate included in the final Engineer's Report for LLA District No. 4, Zone 76, Tesoro Adobe Park ("**Budget**"), a copy of which is attached hereto as Exhibit E and incorporated herein by this reference, and shall be determined as follows: (a) subtracting the Total District Share (as shown on the Budget) from the Total Expenses (as shown on the Budget), (b) dividing the difference by the number of Project Units subject to and liable for assessments in accordance with the Declaration on the Dues Commencement Date, and (c) dividing that amount by twelve (12).

3.2 County shall distribute to the Master Association by mail, no less than ninety (90) days before the beginning of each fiscal year of County, a copy of the pro forma operating budget for the Historical Site and a notice of a request of any increase or decrease in the Master Association Dues Subsidy, if applicable, to the forthcoming fiscal year based on the pro forma operating budget. The pro forma operating budget shall be prepared consistently with the prior fiscal year's operating (income) statement and shall include (a) an estimate of all revenue (including, but not limited to, revenue derived from the LLAD and from all admission and other fees obtained in connection with the operation of the Historical Site) and expenses for the forthcoming fiscal year, and (b) adequate reserves for contingencies and for deferred maintenance, repair, replacement or improvements to the Historical Site and Historical Structures. In addition, an annual report shall be distributed to the Master Association within one hundred twenty (120) calendar days after the close of County's fiscal year consisting of: (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the fiscal year; (d) any information required to be reported under *California Corporations Code Section 8322*; and (e) a review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

The Master Association shall have the right to review and approve each year, the pro forma operating budget and annual report for the Historical Site, described hereinabove, within thirty (30) days of receipt thereof, in order to determine whether the Master Association Dues Subsidy for the forthcoming fiscal year is reasonable. Further, the Master Association's obligation to pay the Master Association Dues Subsidy shall be contingent upon its receipt of the pro forma operating budget and annual report each year, as described herein. In the event that the Master Association shall not approve such pro forma operating budget and annual report, the Master Association shall give the County written notice of disapproval thereof, but shall continue to pay to the County the amount of the Master Association Dues Subsidy for the prior year until such dispute is resolved; provided, however, the Master Association shall continue to assess its members the amount of the Master Association Dues Subsidy included in the disputed pro forma operating budget and, depending upon the resolution of the dispute, either (a) pay the difference of the amounts actually paid to the County and the disputed total Master Association Dues Subsidy to the County, or (b) refund the overage to the member who paid it, as appropriate. Any dispute arising out of or in any way relating to the payment of the Master Association Dues Subsidy or any rights and obligations contained within the Reciprocal Easement and Joint Use Agreement shall be resolved by judicial reference or arbitration in accordance with Sections 18 and 19 of this Agreement. The County hereby agrees that so long as

the Master Association is paying any dues to the County, all monies received by the County for the purposes of maintenance, repair, operation and administration of the Historical Site shall be used exclusively for such purposes for the Historical Site.

4. Required Insurance.

4.1 By County. County shall at all times maintain in full force and effect comprehensive, broad form, general liability insurance that shall protect against claims and liability for personal injury, death, and/or property damage arising from the use and/or condition of the Historical Site, the improvements thereon, and/or any abutting public right-of-way, and it shall provide combined single limit protection of at least One Million Dollars (\$1,000,000) per occurrence with a maximum deductible of Twenty-five Hundred Dollars (\$2,500). Such insurance shall be carried only with responsible insurance companies licensed to do business in California. County shall deliver certificates periodically to the Master Association that provide evidence that such insurance has not lapsed or been materially changed and the same is and will remain in full force and effect for at least one (1) year from the date of the certificate, it being County's obligation to ensure that the Master Association always has evidence that such required insurance coverage is at all times in force and effective. In lieu of commercial insurance, the County shall retain the right to self-insure all or any portion of its insurance obligations herein.

4.2 By the Master Association. The Master Association shall at all times and at its sole cost and expense maintain in full force and effect comprehensive, broad form, general liability insurance that shall protect against claims and liability for personal injury, death, and/or property damage arising from the use and/or condition of the Master Common Area Easement Area, the improvements thereon, and/or any abutting public right-of-way, and it shall provide combined single limit protection of at least One Million Dollars (\$1,000,000) per occurrence with a maximum deductible of Twenty-five Hundred Dollars (\$2,500). Such insurance shall be carried only with responsible insurance companies licensed to do business in California. The Master Association shall deliver certificates periodically to County that provide evidence that such insurance has not lapsed or been materially changed and the same is and will remain in full force and effect for at least one (1) year from the date of the certificate, it being the Master Association's obligation to ensure that County always has evidence that such required insurance coverage is at all times in force and effective.

5. Indemnification. Each of the Parties hereto hereby indemnifies and agrees to forever save and hold harmless the other Parties hereto, and their respective officers, agents and employees from and against any and all damages, claims, losses, demands, costs, expenses (including reasonable attorneys' fees and costs), obligations, liens, liabilities, actions and causes of action, threatened or actual, which such other Party or Parties may suffer or incur arising directly or indirectly with respect to any Party's obligations pursuant to this Agreement.

6. Defaults, Remedies. If any Party hereto shall be in breach or default of its covenants or obligations under this Agreement, then prior to exercising any right or remedy in connection therewith, the nondefaulting Party shall notify the defaulting Party of the occurrence of such breach or default, describing the particulars thereof, and shall demand that the same be fully cured within thirty (30) days after receipt of such notice. If, thereafter, such breach or default is not so fully

cured, then the nondefaulting Party may exercise such rights and remedies available to it at law, in equity and/or hereunder including, by way of example only, specific performance and compensation for any damage caused by such breach or default.

7. Rights Cumulative, No Implied Waivers. Each of the rights and remedies available hereunder, at law or in equity are cumulative, and the exercise by any such Party hereto of one or more of such rights or remedies shall not preclude such Party's exercise, at the same time or different times, of any other right or remedy for the same or any other breach or default by the other Party. No waiver of any right, remedy, breach, default or other provision hereof shall be implied, and any such waiver shall be effective only if in writing and signed by the Party to be charged with such waiver. No waiver of any breach of any provision hereof shall be deemed a waiver of any subsequent breach whether of the same or another provision hereof.

8. Time of the Essence; Construction. Time is of the essence of each and every provision hereof. Use of the neuter shall include the masculine and feminine, the singular shall include the plural, and vice versa.

9. Notices. Any notice, demand or other communication which any Party may be required or may wish to give to another Party shall be in writing and shall be addressed to said other Party at the address listed below. Any such notice so addressed shall be deemed delivered upon receipt if delivered personally or by courier service or on the third (3rd) business day after deposit into the U.S. mail if sent by certified mail, postage prepaid, return receipt requested. If any Party wishes to change its address for the receipt of any notice hereunder, then such owner shall notify the other owner of such address change in accordance with the provisions of this Section.

If to Montalvo Properties LLC:

Montalvo Properties LLC
3600 Birch Street, Suite 100
Newport Beach, California 92660
Fax: (949) 863-9010
Attention: Tim Collins & John Evans

with a copy to:

Leven & Seligman
1900 Avenue of the Stars
19th Floor
Los Angeles, California 90067
Fax: (310) 843-9353
Attention: Gary E. Leven, Esq.

If to SunCal/Tesoro:

SunCal/Tesoro, LLC
5109 E. La Palma Avenue
Suite D
Anaheim, California 92807

Fax: (949) 693-6731
Attention: Bruce Elieff

with a copy to:

SunCal/Tesoro, LLC
21601 Devonshire Blvd.,
Suite 116
Chatsworth, California 91311
Fax: (818) 772-2067
Attention: Frank Faye and Bob Barjam

and:

Voss, Cook & Thel LLP
895 Dove Street
Suite 450
Newport Beach, California 92660
Fax: (949) 720-1508
Attention: Bruce V. Cook, Esq.

If to County:

Los Angeles County Department of Parks and Recreation
455 South Vermont Avenue
Los Angeles, CA 90020
Attention: Tim Gallagher, Director

with a copy to:

If to Master Association:

Tesoro del Valle Master Homeowners Association
c/o Merit Property Management, Inc.
25910 Acero Street, #200
Mission Viejo, CA 92691
Attention: Kathy Zechmeister

10. Entire Agreement. This Agreement, together with the Exhibits attached hereto and forming a part hereof, constitutes the entire agreement among the Parties with respect to the matters covered herein and supersedes any prior negotiations, understandings or agreements with respect to the matters contemplated hereby.

11. Exhibits Incorporated. Each of the Exhibits attached hereto are incorporated herein and made a part of this Agreement.

12. Amendments, Waivers in Writing. This Agreement may not be amended or altered

except by a written instrument signed by each of the then-owners of fee title to the Historical Site and the Master Common Area Lot.

13. Severability. Should any term, part, portion or provision of this Agreement or any application hereof to any person or circumstance be held to be illegal, invalid or in conflict with any applicable law, rule or regulation, then the validity of the remaining terms, parts, portions and provisions hereof and the application hereof to other persons or circumstances shall be deemed severable, and the same shall remain enforceable and valid to the fullest extent permitted by law.

14. Covenants Running with the Land. The Parties hereto do hereby agree to the provisions hereof on its own behalf and on behalf of the subsequent owners of the Historical Site and the Master Common Area Lot, it being intended that this Agreement and its provisions shall run with the land, shall be binding upon, and shall inure to the benefit of the Parties hereto and each such subsequent owner of the Historical Site and the Master Common Area Lot.

15. Counterpart. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

16. Judicial Reference. Any dispute arising out of or in any way relating to this Agreement shall be resolved by judicial reference or arbitration, as described in Section 17 below. The same shall be governed by and be conducted in accordance with *California Code of Civil Procedure Sections 638 through 645.1* (as amended from time to time) as well as the following provisions:

16.1 The proceeding shall be brought and held in the County in which the Project is located unless the parties agree to an alternate venue. The parties shall use the procedures adopted by the Judicial Arbitration and Mediation Service, Inc./Endispute ("JAMS") for judicial reference and selection of a referee.

16.2 The parties shall agree upon a single referee who shall have the power to try any and all of the issues raised (whether of fact or of law) which may be pertinent to the matters in dispute and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS. The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances other than punitive damages and the referee may require one or more pre-hearing conferences. The parties shall promptly and diligently cooperate with each other and the referee and perform such acts as may be necessary for an expeditious resolution of the dispute.

16.3 The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge. A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals, if any. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

16.4 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable. Said statement of decision upon all of the issues considered by the referee shall be binding upon the parties and, upon filing of the statement of

decision with the clerk of the court or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable.

17. Arbitration. Any dispute arising out of or in any way relating to this Agreement shall be resolved by judicial reference, as described in Section 16 above, or arbitration, as described hereinbelow. If such parties elect to utilize arbitration to settle or resolve such claim or dispute, then the arbitration shall be conducted in accordance with the following provisions:

17.1 The claimant shall be responsible for paying the initial fees and costs. The arbitrator(s) shall ultimately determine, however, which of the parties shall be liable for some or all of the costs and fees of the arbitration including the initial and ongoing fees and costs.

17.2 The arbitration shall be administered by a neutral and impartial person (the "administrator") selected by the party responsible for advancing the initial fees and costs pursuant hereto.

17.3 One (1) or more (but no more than three (3) neutral and impartial individuals shall serve as arbitrator(s), and they shall be selected and appointed by mutual agreement of the parties within sixty (60) days from the date of the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator(s) and the administrator, the provisions of *California Code of Civil Procedure Section 1297.121* (as amended from time to time) shall apply. An arbitrator or an administrator may be challenged for any of the grounds listed therein or in *California Code of Civil Procedure Section 1297.124* (as amended from time to time).

17.4 The venue of the arbitration shall be within the County unless the parties agree to some other location.

17.5 The arbitration shall be conducted in accordance with the Rules and Regulations of JAMS.

17.6 The arbitration shall commence and be concluded promptly and timely in accordance with the rules applicable thereto, but if said rules do not specify, and the parties cannot otherwise agree upon, a commencement date, then the arbitrator(s) shall fix the same.

17.7 The arbitrator(s) shall have the authority to provide for all recognized remedies available at law, in equity and hereunder for any cause of action which is the basis of the arbitration. The arbitrator(s) shall, however, base any award and/or final decision on the terms and provisions of this Agreement, if applicable, and in any event they shall endeavor to follow the law and judicial precedent which a United States District Judge sitting in the Central District of California would apply if the dispute or claim was being litigated in such court; provided, however, that nothing contained herein shall be deemed to enlarge the grounds for vacating arbitral awards even if, despite such endeavors, the arbitrator(s) fail to correctly follow applicable law.

17.8 The parties shall have the right to discovery in accordance with *California Code of Civil Procedure Section 1283.05* (as amended from time to time).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its duly authorized officer(s), agents(s) or representative(s) as of the date first written above.

DATED: _____

MONTALVO PROPERTIES LLC,
a California limited liability company

By: _____
Name: Joseph D. Clougherty
Title: Managing Member

By: _____
Name: Bernard J. Clougherty
Title: Managing Member

DATED: _____

"County"

By: _____
Name: _____
Title: _____

DATED: _____

SUNCAL / TESORO, LLC, a Delaware
limited liability company

By: SCC Acquisitions, Inc., a California
corporation member

By: _____
Name: _____
Its: _____

By: LB / Lakeside Capital Partners, LLC, a
Delaware limited liability company,
Member

By: _____
Name: _____
Its: _____

DATED: _____

"Master Association"
Tesoro del Valle Master Homeowners
Association, a California nonprofit mutual
benefit corporation

By: _____
Title: _____

By: _____
Title: _____

Exhibits:

- A: Description of Historical Site
- B: Depiction of Master Common Area Easement Area
- C: Depiction of Historical Site Easement Area
- D: Historical Site Rules
- E: Budget

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

SUBORDINATION BY LENDER

The undersigned ("**Lender**") is the current owner of and beneficiary under that certain deed of trust dated _____ (the "**Blanket Trust Deed**"), made by _____ as trustor to _____, as trustee, that was recorded in the Official Records of Los Angeles County, California, on _____, as Instrument No. _____ and creates a lien against the **[Fill in Master Common Area Lot or Historical Site, as appropriate]**.

Lender does hereby: (1) consent to each and all of the provisions contained in the foregoing Agreement to which this page is appended and of which this page is a part (together with all amendments, modifications, supplements and replacements thereof or thereto whether now or hereafter made, collectively, the "**Agreement**"); (2) agree that the lien and charge of the Blanket Trust Deed shall be, and is hereby made, subject, subordinate, and junior, in all respects, to the Agreement, which shall remain at all times unconditionally prior and superior to the lien and charge of the Blanket Trust Deed; and (3) acknowledge and agree that the Blanket Trust Deed and the instrument(s) evidencing the obligations secured thereby shall be appropriately marked and endorsed to reflect the subordination effected hereby.

Executed by the duly authorized agent(s), officer(s) or representative(s) of Lender as of the date first written above.

"Lender"

EXHIBIT "A"
Description of Historical Site

Lot 5 of Tract 51644-05 in the County of Los Angeles, State of California, as per map recorded in Book 1273, Pages 7 through 16, inclusive, of Miscellaneous Records (Maps) in the Office of the County Recorder of said County.

EXHIBIT "B"
Depiction of Master Common Area Easement Area

EXHIBIT "C"
Depiction of Historical Site Easement Area

EXHIBIT "D"

Historical Site Rules

1. The County shall operate and maintain the Historical Site in a manner appropriate to a public site that is located within a residential neighborhood and adjacent to a recreational facility. The County shall further operate and maintain the Historical Site in accordance with the Preservation Covenant, including but not limited to, keeping the Historical Site open to the public on a regular and continuous basis in response to public demand for said access, but in no event less than twelve (12) days per year, and at such other times by appointment to permit persons affiliated with educational organizations, professional architectural associations and historical societies to study the Historical Structures. Any such public admission may be subject to restrictions as reasonably designed for the protection and maintenance of the Historical Structures. Such admission may also be subject to a reasonable fee, as determined by the County; provided, however, that such admission fee shall be waived for members of the Master Association ("Homeowners"). These Historical Site Rules are intended to be evolutionary to facilitate a high level of maintenance and preservation of a unique historic resource.
2. The County, in consultation with the Coordinating Committee, shall be responsible to prepare and monitor an annual master calendar and to allocate and assign equitable use of the Historical Site by the Master Association and the public, including but not limited to, educational and cultural institutions, filming companies and private parties. In the event of conflicts prior to the actual booking of an event, the following uses shall have the following priority: the interpretive center shall be open to the general public on the first Saturday of every month, between 10:00 a.m. – 5:00 p.m. and this use shall have first priority during this period of time. The Master Association and Homeowners shall have first priority for use during other portions of the weekends; the William S. Hart Union High School District shall have second priority for use during other portions of the weekends, but shall have first priority for use during the week for educational programs; and other historical/cultural events shall have third priority.
3. The County, in consultation with the Coordinating Committee, shall establish a list of other acceptable and compatible uses and specify the days, limitations and times when appropriate, such as: Cultural Events–Music, Recitals, Lectures, Etc.; Fundraising Events; Educational Classes/Tours; Celebrations–Receptions, Parties, Etc.; Commercial Ventures–Movie Production. All persons or entities that shall be allowed to use the Historical Site ("Users") shall be subject to the terms and provisions of the Historical Site Rules.
4. In scheduling and establishing use of the Historical Site, the County, in consultation with the Coordinating Committee, shall take reasonable measures to ensure that disturbances to the Homeowners are minimized. This includes, but is not limited to, placing restrictions and/or limitations on noise, traffic, hours of operation, ambient light and parking.
5. Occupancy Limits will be established for each specific use, such as: Main Ranch House viewing limited to thirty (30) people. Occupancy of all other areas of the Historical Site shall be limited to the amount allowed in accordance with the local municipal codes.
6. All children must be accompanied by an adult at all times.

7. A reasonable Rental Fee, Clean-up Fee, Coordination/Operational Fee and Security Deposit shall be charged for use of the Historical Site in the amounts to be determined, except as follows:

- a. The Master Association and the Homeowners shall be exempt from payment of the Rental Fee.
- b. The County shall be entitled to a waiver of the Rental Fee for two events per year.
- c. All fees may be waived for interpretative/educational uses.

In addition to the above, a fee may be charged for special security and/or valet parking to mitigate parking conflicts, if it is determined by the County that such fees are necessary. All fees will be reviewed annually and revised, if appropriate.

8. Prior to the rental of the Historical Site by any User, such User shall be required to read and approve, in writing, the regulations and restrictions for use of the Historical Site, including but not limited to:

- a. limits and restrictions for noise abatement (i.e. use of amplified music and/or public address systems), traffic, hours of operation and ambient light.
- b. clean-up requirements, including but not limited to, removal of all trash.
- c. Security and Safety Instructions, the prohibition of use or entry onto the property of the Master Association and the Homeowners.
- d. The hours of operation of the Historical Site shall begin no earlier than 10:00PM and shall end no later than 11:00 PM on Friday and Saturday and 9:30 PM on Sunday – Thursday.
- e. Use of caterers from list approved by the County.
- f. Other rules of conduct.
- g. Obtaining parking permits for the User's guests.

9. Certificates of Insurance and additional insured endorsements may be required by certain Users in an amount of coverage to be determined by the County. In addition, each User shall be required to execute an indemnification agreement indemnifying and holding harmless the County and the Master Association from and against any and all damages, claims, losses, demands, costs, expenses (including reasonable attorneys' fees and costs), obligations, liens, liabilities, actions and causes of action, threatened or actual, which arise directly or indirectly with respect to such User's use of the Historical Site.

10. There shall be no overnight parking within the Historical Site or the Master Common Area Easement Area.

11. Any operation, use and/or repair of the Historical Structures must be consistent with the requirement to preserve their historical character. No permanent changes or other alterations of the historical Structures may be made unless in conformance with the Secretary of the Interior's Standards for Rehabilitation.

EXHIBIT "E"
Budget

COUNTY OF LOS ANGELES
REQUEST FOR APPROPRIATION ADJUSTMENTDEPT'S. 600 - 06
No.

DEPARTMENT OF Parks and Recreation

February 2, ~~XX~~ 2005

AUDITOR-CONTROLLER.

THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. WILL YOU PLEASE REPORT AS TO ACCOUNTING AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF ADMINISTRATIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR

FY 2004-2005

4 - VOTE BUDGET ADJUSTMENT

FINANCIAL SOURCES:

Tesoro Adobe Special Fund

Revenue: Operating Transfer In

CAL - PK - 40530 - ~~999~~ 9911 cy

\$11,000.00 Increase Revenue

Tesoro Adobe Special Fund

Revenue: Reimbursement of Expense - HOA

CAL - PK - 40530 - 9846

\$41,000.00 Increase Revenue

Tesoro Adobe Special Fund

Revenue: Donations

CAL - PK - 40530 - 9686

\$85,000.00 Increase Revenue

FINANCIAL USES:

Tesoro Adobe Special Fund

Services & Supplies

CAL - PK - 40530 - 2000

\$137,000.00 Increase Appropriation

JUSTIFICATION: To establish and provide appropriation for the operation and maintenance of the park.

LLAD - L #4 2n76

Services and Supplies cy

P31 - PK - 52999 - 2000 kw

\$ 11,000.

LLAD - L #4 2n76 cy

Operating Transfer Out kw

P31 - PK - 52999 - 6100

\$ 11,000

CHIEF ADMINISTRATIVE OFFICER'S REPORT

REFERRED TO THE CHIEF
ADMINISTRATIVE OFFICER FOR

ACTION

RECOMMENDATION

APPROVED AS REQUESTED

AS REVISED

February 03 2005

CHIEF ADMINISTRATIVE OFFICER

APPROVED (AS REVISED):
BOARD OF SUPERVISORS

19

BY

DEPUTY COUNTY CLERK

AUDITOR-CONTROLLER

BY

Conroy

Feb. 3

2004

No. 253

SEND 5 COPIES TO THE AUDITOR-CONTROLLER

Tesoro Adobe Park
Projected Annual Operating Expenses and Revenue

	Fiscal Year						
	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
No. of Assessable EDUs (LLAD)	927	1,200	1,400	1,575	1,791	1,791	1,791
Assessment per EDU	\$ 57.00	\$ 59.00	\$ 61.06	\$ 63.20	\$ 65.41	\$ 67.70	\$ 70.07
No. of Assessable Property Units	700	900	1,000	1,077	1,077	1,152	1,152
<u>Operating Requirements</u>							
Salaries & Employee Benefits	41,000	167,000	171,000	175,000	179,000	183,000	188,000
Services & Supplies	26,000	106,000	110,000	114,000	117,000	122,000	126,000
LLAD Reserve	22,000	\$ 30,000	\$ 36,000	\$ 42,000	\$ 49,000	\$ 51,000	\$ 53,000
LLAD Administration	11,000	27,000	31,000	34,000	37,000	39,000	40,000
Total Operating Requirements	\$ 100,000	\$ 330,000	\$ 348,000	\$ 365,000	\$ 382,000	\$ 395,000	\$ 407,000
<u>Financing Sources</u>							
LLAD Prior Year End Reserve	\$ 9,000	\$ 91,000	\$ 30,000	\$ 36,000	\$ 42,000	\$ 49,000	\$ 51,000
LLAD Benefit Assessment	\$ 53,000	\$ 71,000	\$ 85,000	\$ 99,000	\$ 117,000	\$ 121,000	\$ 125,000
Master Association Payments	21,000	108,000	120,000	129,000	129,000	138,000	138,000
One-Time Donation	85,000						
Interest	1,000	2,000	2,000	2,000	2,000	3,000	3,000
Rental and Admission Fees	-	2,000	2,000	3,000	3,000	3,000	3,000
Total Financing Sources	\$ 169,000	\$ 274,000	\$ 239,000	\$ 269,000	\$ 293,000	\$ 314,000	\$ 320,000
Projected Net County Cost Required	\$ (69,000)	\$ 56,000	\$ 109,000	\$ 96,000	\$ 89,000	\$ 81,000	\$ 87,000
Average Net County Cost		\$ 86,333.33					

Notes:

Assumes County takes ownership of Park as of March 2005

Assumes CPI of 3.5 percent applied to expenses and benefit assessment